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PAAB

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2021-009-10060C

Parcel Nos. 10-25-300-011 & 10-25-300-014

Denver Development, LLC,

Appellant,

vs.

Bremer County Board of Review,

Appellee.

Introduction

This appeal came on for written consideration by the Property Assessment Appeal Board (PAAB) on November 19, 2021. Wes Gielau, manager/member, represented Denver Development, LLC, and asked the appeal proceed without a hearing. Chief Deputy Bremer County Assessor Aaron Betts represented the Board of Review.

Denver Development, LLC owns two unimproved parcels located in Denver, Iowa. The properties' January 1, 2021 assessments were set and modified as follows. (Exs. H & K).

Parcel Number	Assessed Value	Assessed Value after BOR
Parcel 1 - 10-25-300-011	$133,700	$104,750
Parcel 2 - 10-25-300-014	$87,250	$87,250

Denver Development petitioned the Board of Review claiming the properties were misclassified as commercial under Iowa Code section 441.37(1)(a)(1)(c) (2021). (Ex. J).

The Board of Review denied the petitions, but lowered the value on parcel 10-25-300-011. (Ex. K).

Denver Development appealed to PAAB reasserting its claim the properties were misclassified.[1] It believes the properties should be classified agricultural.

General Principles of Assessment Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2021). PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701-126.2(2-4). New or additional evidence may be introduced. *Id.* PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a).

Findings of Fact

The two subject properties are unimproved sites identified as Parcel Number 10-25-300-011 (hereinafter Parcel 1) and Parcel Number 10-25-300-014 (hereinafter Parcel 2). Parcel 1 is a 2.580-acre site and Parcel 2 is a 6.980-acre site. (Ex. H). The parcels are adjacent to one another along Highway 63. (Exs. C, D). Denver Development also owns a third Parcel (Parcel 12-25-300-029) located just north of the subject properties off Jefferson Avenue; it is not part of this appeal.

For the January 1, 2021 assessment the classification of both parcels was changed from agricultural to commercial. Since 2008, both parcels had been classified agricultural. Denver Development contends the properties are undeveloped, being

[1] Denver Development marked the box on the appeal form indicating an error in the assessment. However, the plain statement indicates the true nature of its claim is that of misclassification.

farmed, and nothing has changed with the use of the land to warrant a change in classification. (Appeal & Ex. J). It submitted no evidence to PAAB.

The Board of Review provided historical information about the subject properties. (Ex. A). Denver Development purchased approximately 149 acres in 2006 for $310,000. (Exs. B & C). It sold off roughly 131 acres of excess farm land in 2009 for $635,000. Part of this original purchase became Parcel 2. Denver Development purchased Parcel 1 in August 2007 for $220,000. At that time, it was improved with a dwelling, which was sold to be moved for $30,000 in 2008. Parcel 1 was included in a voluntary annexation into the City of Denver city limits in May 2008. It has a street address; 2101 270th Street. (Exs. A & H).

The Board of Review explained the Assessor's Office had periodically reviewed this area since 2008 and provided aerial photographs of the subject properties from 2007 to the present showing changes and surrounding development. (Ex. D). Based on these photographs, Parcel 1 was described as being used for a dump site of excess materials from other sites with some possible hay crop. According to the Assessor's Office a field review showed minimal, if any, agricultural use was occurring.

In 2020, Parcel 1 was listed for sale by Denver Development for $250,000. (Ex. E). The RE/MAX listing describes the property as "[e]xcellent location just south of Denver, Iowa along Highway 63. Zoned Commercial. Traffic count is 8200 per day." Wes Gielau with RE/MAX and a manger of Denver Development met with the Board of Review to discuss the properties. He stated the area has hay cut by a local farmer but Denver Development receives no income from the hay. According to the Board of Review, Gielau stated "hay ground shows better when listed for sale." (Ex. A). Gielau also indicated in the future this area will be sold off in 1.5 acre lots for $150,000 per acre.

The record includes a listing of seven other Bremer County parcels sold by Denver Development between 2013 and 2019. (Ex. G). These parcels ranged in size from 0.6 acres to 2.0 acres with sale prices between $70,000 to $196,000. The buyers include a bank, a marketing company, and other property developers. Denver

Development asserts the subject parcels should remain agriculturally classed until they are improved. (Appeal).

The Board of Review asserts the parcels may have been incorrectly classified in recent years. It did not disagree some hay may have been harvested on the parcels, but this activity was not for an intended profit. The record contains no information about the local farmer who cuts the hay. The Board of Review further noted the assessment of the properties are considerably less than the asking price.

Analysis & Conclusions of Law

Denver Development asserts the subject properties are misclassified as commercial and should instead be classified agricultural.

Assessment classifications for property tax purposes are to be determined pursuant to rules adopted by the Iowa Department of Revenue (IDR). Iowa assessors are to classify and value property following the provisions of the Iowa Code and administrative rules adopted by IDR, and must also rely on other directives or manuals IDR issues. Iowa Code §§ 441.17(4), 441.21(1)(h). IDR has promulgated rules for the classification and valuation of real estate. *See* Iowa Admin. Code r. 701-71.1. The assessor shall classify property according to its present use. *Id*. Classifications are based on the best judgment of the assessor exercised following the guidelines set out in the rule. *Id*. Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. *Id*. There can be only one classification per property, except as provided for in paragraph 71.1(5) “b”. *Id*. The determination of a property’s classification “is to be decided on the basis of its primary use.” *Sevde v. Bd. of Review of City of Ames*, 434 N.W.2d 878, 880 (Iowa 1989). The assessment is determined as of January 1 of the year of the assessment. §§ 428.4, 441.46; Iowa Admin. Code R. 701-71.2. Denver Development bears the burden to prove the properties are misclassified. § 441.21(3). *See also Miller v. Property Assessment Appeal Bd*., 2019 WL 3714977 at *2 (Iowa Ct. App. Aug. 7, 2019).

Commercial property “shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where

goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail." R. 701-71.1(5).

Conversely, agricultural property includes land and improvements used in good faith primarily for agricultural purposes. R. 701-71.1(3). Land and nonresidential improvements

> shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest and fruit trees, the rearing, feeding, and management of livestock, or horticulture*,* all for intended profit*.* Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in the subrule.

Id.

In applying the classification rules, we look at the unique facts of each case in order to determine the property's primary use and correct classification. Here, the subject properties have been owned by Denver Development for over a decade. Other parcels owned by Denver Development have been sold over the last eight years to various business entities. The subject parcels are zoned commercial and Parcel 1 is currently listed for sale for more than double its assessed value. The information supplied by Wes Gielau to the Board of Review indicated additional acres will be sold off in 1.5 acre lots for $150,000 per acre.

Denver Development asserts these parcels are still at least partially cropped by a local farmer who does not compensate Denver Development. The record is devoid of any information about the volume of the hay crop or whether the farmer makes a profit from these parcels. Rather, the record indicates Gielau's belief that properties are marketed better if hay is growing thereon.

This case bears a resemblance to the facts presented to PAAB in *Stephen R Grubb 2003 Revocable Trust v. Dallas County Board of Review*, Docket Nos. 11-25-0338 & 12-25-0043 (November 8, 2012). That case involved three unimproved parcels west of Des Moines. Grubb, a local real estate developer, asserted the parcels were used for growing crops before and after Grubb's purchase. A local farmer had five or six leases for different tracts owned by Grubb. He also grew and harvested corn on the

three subject parcels, but did not compensate Grubb. The farmer testified he made a net profit from the three parcels, but only farms them in order to maintain a relationship with Grubb and the ability to farm Grubb's other properties. The three parcels were not listed for sale, but had signs stating they were available for development.

Under the facts in *Grubb*, PAAB found the farmer to be the principal user of the property and presently used the parcels in good faith and with an intent to profit. Grubb presented substantial evidence, including testimony from the farmer in support of his claim. Accordingly, the classification was returned to agricultural. A major distinction between this case and *Grubb*, however, is the evidence provided supporting an agricultural classification; in *Grubb* there was substantial evidence, here there is none.

Based upon what has been submitted in this case, we cannot find the principal and primary use of the subject properties is agricultural. The Assessor's visual inspection of the parcels found they have not been solely used for harvesting crops, have served as a dump site, and there was minimal, if any, agricultural use. Denver Development has not offered evidence contradicting that report and, in our opinion, the aerial and ground level photographs generally substantiate that conclusion. In addition to their obvious use as a dump location, the aerial photographs show diminishing agricultural use from 2007 to 2021; such that there appears to be little agricultural use as of spring of 2021.

Rather, the principal use appears to be to hold the properties for future sale and development, and any agricultural activity taking place is merely to enhance the appearance and likelihood of the parcels' sale. Moreover, because there is no evidence demonstrating a good faith intent to profit from any potential agricultural endeavor, we find the subject properties do not qualify for agricultural classification under the first sentence of Rule 701-71.1(3).

Viewing the record as a whole, we find Denver Development failed to support its claim that the subject properties are misclassified.

Order

PAAB HEREBY AFFIRMS the Bremer County Board of Review's action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A.

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A.19 (2021).

Elizabeth Goodman, Board Member

Dennis Loll, Board Member

Karen Oberman, Board Member

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